IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 29749 of 2007(N)

PETITIONER:

AJEESH KUMAR, S/O. SADASHIVAN,
RADHANILAYAM, KAVIYOOR, THIRUVALLA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY, DEPARTMENT OF EXCISE,
   KERALA GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM.

2. **COMMISSIONER OF EXCISE,**
   THIRUVANANTHAPURAM.

3. **ASST. EXCISE COMMISSIONER,**
   PATHANAMTHITTA.

4. **THE CIRCLE INSPECTOR OF EXCISE,**
   THIRUVALLA.

5. **THE CIRCLE INSPECTOR OF EXCISE,**
   EE & ANSS, PATHANAMTHITTA.

6. **EXCISE INSPECTOR, THIRUVALLA.**

BY GOVERNMENT PLEADER (SMT. ANU SIVARAMAN)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 29749 OF 2007 N

Dated this the 8th October, 2007

JUDGMENT

Petitioner is one of the licensees of the toddy shop covered by Ext.P1 licence. Petitioner is the second accused in Ext.P2 Crime Occurrence Report. According to petitioner, it is a cooked up case at the instance of the rivals. Ext.P3 is the Seizure Mahazar. Ext.P4 is the order issued by the second respondent by which the business of the petitioner was stopped and also he was called upon to show cause why the licence should not be cancelled. Ext.P5 is the representation given by the petitioner seeking a fair investigation and to permit him to conduct the toddy shop. Ext.P6 is the explanation submitted by petitioner. No action is taken, complains by petitioner, on Ext.P6. Petitioner challenges Ext.P4 and seeks a direction to permit him to continue business. He also seeks a direction to take further action based on Ext.P6 explanation. Of course,

learned counsel for petitioner would submit that without obtaining a chemical examination report, it is not open to the second respondent to issue Ext.P4. Counsel also relies on a decision of the Supreme Court in State of Kerala and Others v. Unni & Another (2007 (2) SCC 365).

2. Heard the learned Government Pleader also. I feel that a decision should be taken on Exts.P5 and P6 after hearing the petitioner. Accordingly, the Writ Petition is disposed of directing the second respondent to consider and take a decision on Exts.P5 and P6 in accordance with law after affording an opportunity of hearing to the petitioner or his representative. In view of the contentions raised by the petitioner, I feel that an early decision should be taken particularly in view of the fact that Ext.P4 is dated 25.8.2007, Ext.P5 is dated 24.8.2007 and Ext.P6 is seen dated 7.9.2007. Accordingly, the petitioner or his representative shall be present before the second respondent on 16.10.2007 at 11 A.M. The second respondent will proceed to

conduct the hearing and take a decision and communicate the same to the petitioner within a period of one week from the date of hearing.

K. M. JOSEPH, JUDGE

kbk.